

*LMK  
Brewant, J*

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Southern District of New York  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EARLENE LAMAR,	:	<b>ECF CASE</b>
	:	
Plaintiff,	:	<b>CONSENT NOTICE OF</b>
	:	<b><u>VOLUNTARY DISMISSAL</u></b>
-against-	:	
	:	07 Civ. 11050 (CLB)
NANCY JENKINS, M.D., DOUGLAS MARK	:	
KAIDEN, M.D., SALVATORE PASQUALE, M.D.,	:	
JANE CHAN, M.D., BARRY KROSSER, M.D.,	:	
HUDSON VALLEY HOSPITAL CENTER, and	:	
PEEKSKILL AREA HEALTH CENTER,	:	
	:	
Defendants.	:	
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WHEREAS, on or about November 6, 2006, Earlene Lamar ("Plaintiff") filed a complaint (the "Complaint") in the above-captioned action against Nancy Jenkins ("Nurse Jenks"),\* Douglas Mark Kaiden, Salvatore Pasquale, Jane Chan, Barry Krosser, Hudson Valley Hospital Center, and Peekskill Area Health Center ("Peekskill"), under Index Number 21921/06;

WHEREAS, on October 22, 2007, Michael J. Garcia, the United States Attorney for the Southern District of New York, certified that Nurse Jenks and Peekskill were acting within the scope of their federal employment at the time of the incidents alleged in this action, and therefore,

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\* The caption improperly lists nurse Nancy Jenks as "Nancy Jenkins, M.D."

pursuant to section 224(g) of the Public Health Service Act, 42 U.S.C. § 233(g), are deemed to be employees of the United States under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-2680;

WHEREAS, on or about December 6, 2007, the Office of the United States Attorney for the Southern District of New York, removed this action to this Court, on behalf of Nurse Jenks, Peekskill, and the interests of the United States;

WHEREAS, Plaintiff intends to discontinue this action against Nurse Jenks and Peekskill;

WHEREAS, neither Nurse Jenks nor Peekskill have answered or filed motions for summary judgment; and

WHEREAS, Rule 41(a)(1) of the Federal Rules of Civil Procedure provides that “an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action;”

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, Nurse Jenks, and Peekskill, by their respective counsel, as follows:

1. Pursuant to section 224(a), (c), of the Public Health Service Act, 42 U.S.C. § 233(a), (c), and 28 U.S.C. § 2679(d), the United States shall be substituted as defendant in this action to the extent plaintiffs’ claims are against Nurse Jenks and Peekskill.

2. Plaintiff’s claims solely against Nurse Jenks and Peekskill are dismissed with prejudice and without costs or attorney’s fees to any party.

3. Plaintiff's claims solely against the United States are dismissed without prejudice and without costs or attorney's fees to any party.

4. The parties understand and agree that this stipulation does not waive any right or defense of any party under the FTCA, including but not limited to Plaintiff's right, if any, to bring an action against the United States on the basis of the allegations in the Complaint pursuant to the restrictions of the FTCA, including but not limited to the presentment requirement of 28 U.S.C. § 2675(a).

5. The parties further understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York  
December \_\_, 2007

SANOCKI NEWMAN & TURRET  
Attorneys for Plaintiff

By: \_\_\_\_\_

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Dated: New York, New York  
December 11, 2007

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
Attorney for Nancy Jenks, the  
Peekskill Area Health Center, and  
the United States of America

By: \_\_\_\_\_

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3. Plaintiff's claims solely against the United States are dismissed without prejudice and without costs or attorney's fees to any party.

4. The parties understand and agree that this stipulation does not waive any right or defense of any party under the FTCA, including but not limited to Plaintiff's right, if any, to bring an action against the United States on the basis of the allegations in the Complaint pursuant to the restrictions of the FTCA, including but not limited to the presentment requirement of 28 U.S.C. § 2675(a).

5. The parties further understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York  
December 11, 2007

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Attorneys for Plaintiff

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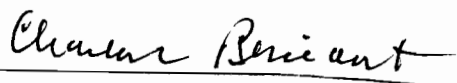
Dated: New York, New York  
December 11, 2007

MICHAEL J. GARCI  
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Southern District of New York  
Attorney for Nancy Joeks, the  
Peekskill Area Health Center, and  
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SO ORDERED:

  
Sr. U.S.D.J.

dated: Dec 20, 2007